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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CYNTHIA BENTLEY, Plaintiff and Appellant, v. EL RIO MOBILEHOME COOPERATIVE, INC., Defendant and Respondent.	H040244 (Santa Cruz County Super. Ct. No. CV170752)

Plaintiff Cynthia Bentley (Bentley) is a tenant at the El Rio Mobilehome Park (Park) located in Santa Cruz. She asserted in her lawsuit against the Park and others that the Park (1) improperly moved the lot lines for her space (Lot 90), and (2) reduced the number of designated parking spaces for her space. The parties stipulated through their counsel to the court making an order of general reference, pursuant to Code of Civil Procedure sections 638, appointing Superior Court Judge Robert B. Yonts (retired), as special master.[1] After the filing of a written report and findings of the special master,[2]

[1] Further statutory references are to the Code of Civil Procedure unless otherwise stated.

[2] The terms "referee" and "special master" are often used interchangeably in connection with orders of reference made under section 638 and 639. (See, e.g., *In re Marriage of Petropoulos* (2001) 91 Cal.App.4th 161, 176 [in case of special reference, "the authority of the referee or special master is limited"].) The California Supreme Court has suggested that the distinction, at least in the context of family law cases, is

(continued)

judgment was entered on September 12, 2013, in favor of the Park. This appeal by Bentley followed.

We conclude that the court did not err. Accordingly, we will affirm the judgment.

PROCEDURAL BACKGROUND[3]

Bentley filed a complaint on April 6, 2011, apparently alleging six causes of action.[4] In June 2012, the Park filed a motion for summary judgment or, in the alternative, summary adjudication. The motion was opposed by Bentley. According to the Park, the motion was granted in part, resulting in the disposition of "claims other than those focused on the lot lines and parking spaces."[5]

Pursuant to the stipulation of the parties through their counsel, on November 7, 2012, the court issued an order of general reference pursuant to section 638, appointing Judge Yonts as special master to resolve the remaining issues.[6] A consent of referee was signed five days later.[7]

"geographically based." (*In re Marriage of Olson* (1993) 14 Cal.App.4th 1, 6.) We will refer to the role of Judge Yonts in this litigation as that of special master.

[3] The record, as provided in the clerk's transcript designated by Bentley, is extremely minimal. We have gleaned essential procedural background matters largely from the briefs and from the Superior Court web site identifying matters such as the date of filing of certain pleadings.

[4] The complaint is not part of the record. We surmise that it contained six causes of action, based upon Bentley's memorandum in opposition to the Park's summary judgment motion. In it, Bentley stated that the Park's motion addressed five of the causes of action of the complaint, namely, the first (breach of contract), third (breach of contract), fourth (conversion), fifth (intentional infliction of emotional distress), and sixth (declaratory relief).

[5] The order regarding the motion for summary judgment/summary adjudication, apparently filed October 12, 2012, is not part of the record.

[6] The Park, in its respondent's brief, asserts erroneously that "the parties engage[d] in a binding arbitration with [Judge Yonts]."

[7] Neither the order of reference nor the consent is part of the record; these procedural matters are derived from the report and findings of the special master (statement of decision) that is part of the appellate record.

On August 19, 2013, the special master filed his five-page report and findings, denoted as a statement of decision in accordance with section 638 (hereafter, the statement of decision). In it, Judge Yonts recited that there was a formal site inspection on February 15, 2013, and that the parties thereafter, through their counsel, stipulated that the matter would be submitted for decision without a further hearing. As noted by Judge Yonts, "the principal issues to be determined [were] Plaintiff Cynthia Bentley's entitlement to automobile parking spaces and the accuracy of the boundary lines of her rented mobile home Lot 90."

From the matters and evidence presented to him, the special master concluded that approximately "seventy[-]five percent of the ninety plus mobile home lots had only one vehicle parking space." Judge Yonts recited that Bentley had claimed she had two parking spaces that were contiguous to another lot (Lot 92) and thus deprived that renter ofat least one parking space. Bentley also had blocked off an area in front of her unit with a wooden porch and patio furniture that could possibly serve as a parking space. In addition to two other parking spaces, Bentley claimed this area in front of her unit as a "disguised [parking] space." The special master recited further that the Park's board of directors (board) had "ordered that Bentley was limited to the vehicle parking space in front of her unit and only one other space," and that it had designated one of the other spaces as belonging to the renter of the adjacent space, Lot 92. Although Bentley claimed that the two parking spaces contiguous to Lot 92 were transferred to her by the previous owners of her unit, Judge Yonts found that the spaces had not been allocated by the Park's board and could not be transferred by one renter to his or her successor. He therefore concluded that Bentley had "no right or claim to one of the two non-contiguous parking spaces she now occupies" and directed that she immediately remove her vehicle from that space. The special master found that Bentley could readily create a parking space by removing the temporary structures she installed in front of her unit.

Judge Yonts recited that, in considering the lot line issue raised by Bentley, he had reviewed various records, heard detailed history related to him by Bentley and Paul Stover (a board member), and had inspected the property. The special master noted that, as stated in the declaration of Jack Kerin, there had been inspections and reinspections of the Park's lot lines performed at the direction of the California Department of Housing and Community Development (HCD). Stover had been assigned to locate all of the boundaries with each line fixed 36 inches from the right side of each unit (looking at the unit from the front) and parallel to the unit.

Judge Yonts found from his inspection that (1) the boundary between Bentley's Lot 90 and Lot 91 was correctly measured, and (2) it was apparent that "the boundary between Units 89 and 90 may be slightly beyond thirty[-]six inches but for the reasons [presented in his statement of decision,] should remain as[-]is." He determined from his review of the evidence that the boundary markers at the Park did "not result in a fee interest of any sort at all. These marks are only a semiformal delineation of the boundaries that each park member and tenant is entitled to occupy . . . The boundaries marked under the orders of HCD do not rise to the dignity of a surveyed boundary that one commonly encounters in deeds and title reports." Judge Yonts also noted that "[t]he accuracy of the lines themselves may suffer from the irregular placement of the mobile homes, as they are not all placed parallel to each other." He observed further it was difficult to create a parallel line for the boundary between Lots 89 and 90 because of the warped nature of the wall of Lot 89's unit, and "[r]emoval or adjusting the location or placement of [that] mobile home is impossible due to the age, deterioration and lightweight construction materials used." Judge Yonts accordingly found that "[t]he corner markers and boundaries of Lot 90 are correctly noted and placed within the meaning of the regulations and requirements of the [HCD]."

The statement of decision was submitted to the court on or about August 15, 2013. There is no record that any party served objections to the statement of decision. (See rule

3.1590(g).) A judgment was entered in favor of the Park on September 12, 2013. The court recited in the judgment that it was adopting the statement of decision of Judge Yonts as special master. There is no record that Bentley filed a motion for new trial (see § 659), a motion to vacate the judgment (see § 663), or a motion for relief from judgment (§ 473, subd. (b)). Bentley filed a timely notice of appeal from the judgment.

DISCUSSION

I. The Parties' Noncompliant Briefs

A. Bentley's Noncompliant Briefs

Before addressing any substantive issues raised by Bentley, we are compelled to identify some procedural deficiencies with her filings with this court. Bentley's opening and reply briefs are not in compliance in a number of respects with the California Rules of Court or with the rules of appellate practice.[8] The opening brief contains minimal citations to the record in support of Bentley's assertions of fact and concerning procedural matters allegedly occurring below, in violation of rule 8.204(a)(1)(C). (See also *In re S.C.* (2006) 138 Cal.App.4th 396, 406-407 ["an appellate court need not search through the record in an effort to discover the point purportedly made"]; *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 800-801 [failure to include citations to appellate record in brief may result in forfeiture of claim].)

Further, Bentley has taken the liberty of appending some 31 pages of documents to her opening brief and 25 pages to her reply brief. These exhibits consist of photographs, meeting minutes, notices of proposed termination of membership, correspondence, and a declaration by Bentley and a letter that are both dated after the entry of judgment in this case. Although a party may append certain documents to his or her appellate brief, there is, absent a court order from the presiding justice upon a showing of good cause, a 10-

[8] Further rule references are to the California Rules of Court unless otherwise specified.

page limit to these attachments. (Rule 8.204(d).) More significantly, Bentley has not demonstrated that the documents appended to her opening and reply briefs were part of the record below. Under rule 8.204(d), the attachments (if not legal authorities) may consist of "exhibits or other materials *in the appellate record* . . ." (Italics added.) "Factual matters that are not part of the appellate record will not be considered on appeal and such matters should not be referred to in the briefs." (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 102 (*Lona*); see also *Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1 (*Doers*) [documents not presented to trial court generally may not be included in record on appeal].) Therefore, rule 8.204(d) may not be utilized by a party on appeal to inject evidentiary or other material that is not part of the appellate record. (See *In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1220, fn. 4 [appellate court will not consider arguments based on exhibits, including "some unidentified communication from the special master," that are not part of the record]; *Hodge v. Kirkpatrick Development, Inc.* (2005) 130 Cal.App.4th 540, 546, fn. 1 (*Hodge*) [exhibit to brief that is not part of record on appeal must be disregarded].)

There is no showing that any of the documents attached to Bentley's briefs are part of the record below. Indeed, Bentley admits that evidence she presents as attachments was not considered by the special master. Because the attachments run afoul of the principles that appellate courts may not consider matters outside of the record, we may not consider them in this appeal. (Rule 8.204(d); *Hodge, supra,* 130 Cal.App.4th at p. 546, fn. 1.) Likewise, we will disregard any factual assertions made by Bentley which are not contained in the record. (*Doers, supra,* 23 Cal.3d at p. 184, fn. 1; *Citizens Opposing a Dangerous Environment v. County of Kern* (2014) 228 Cal.App.4th 360, 366, fn. 8; *Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632; see also rule

8.204(a)(2)(C) [opening brief shall contain summary of facts "limited to matters in the record"].)[9]

The failure to cite to the record connotes another significant problem with the appeal: Bentley's failure to procure an adequate appellate record. We understand that her challenges on appeal relate to the substance of the special master's statement of decision upon which judgment was entered against her. But she has not presented the relevant documents from the court below necessary to adequately address her challenge to the statement of decision in this appeal. Part of the appellant's burden in showing error is to provide an adequate record from which the claimed error may be demonstrated; the failure to present such a record requires that the issue be resolved against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; see also *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 [failure of appellant to include transcript of hearing foreclosed court's review of claim of error].)

We acknowledge that Bentley is representing herself in connection with this appeal and therefore has not had the formal legal training that would be beneficial to her in advocating her position. However, the rules of civil procedure apply with equal force

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[9] After briefing was concluded and shortly before oral argument, Bentley filed a motion seeking, among other relief, an order that this court "take Judicial Notice of all papers currently filed with this Honorable Court, the Memorandum of Points and Authorities, all Oral Arguments and evidence supplied as well as any other evidence submitted." We hereby deny that request. To the extent we are asked to take judicial notice of our own files or of oral argument before us, it is unnecessary that we take judicial notice of such matters as they are already part of the record before us. (See *Fitz v. NCR Corp.* (2004) 118 Cal.App.4th 702, 719, fn. 4 [judicial notice appropriate to consider " '[m]atters that cannot be brought before the appellate court through the record on appeal (initially or by augmentation)' "].) To the extent that Bentley asks that we take judicial notice of "evidence supplied . . . [or] submitted," we deny the request. For the reasons we have stated, we will not consider matters that are outside the record, such as the materials attached to Bentley's appellate briefs. (Rule 8.204(d); *Hodge*, *supra*, 130 Cal.App.4th at p. 546, fn. 1.)

to self-represented parties as they do to those represented by attorneys. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) Thus, "[w]hen a litigant is appearing in propria persona, he [or she] is entitled to the same, but no greater, consideration than other litigants and attorneys." (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638; see also *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247 (*Nwosu*).)

Based upon the wholly noncompliant nature of Bentley's briefs, it would be appropriate to entirely disregard her contentions as having been forfeited. (See *State Comp. Ins. Fund v. WallDesign Inc.* (2011) 199 Cal.App.4th 1525, 1528-1529, fn. 1.) We are, however, able to glean the essential claims of error she makes relative to the judgment. Therefore, in the interests of addressing the merits of the case—and without impliedly minimizing the significance of Bentley's noncompliance with appellate procedures—we will, to the extent possible, address below Bentley's contention that the judgment should be reversed.

B. The Park's Noncompliant Respondent's Brief

Bentley is not alone with respect to appellate briefs lacking compliance with the rules of appellate practice. The respondent's brief submitted by the Park is also noncompliant in several respects. It contains virtually no record citations in violation of rule 8.204(a)(1)(C). Respondent's brief includes *no* citation of legal authority in support of the Park's arguments. (See rule 8.204(a)(1)(B) ["support each point by argument and, if possible, by citation of authority"]; *Dabney v. Dabney* (2002) 104 Cal.App.4th 379, 384 [appellate court "need not consider an argument for which no authority is furnished"].) And the Park, in violation of the California Rules of Court, filed a 173-page attachment as collective Exhibit A to the respondent's brief. This filing exceeded the 10-page limit under rule 8.204(d). Further, the Park has not established that these documents comprised "exhibits or other materials *in the appellate record*." (Rule 8.204(d), italics added.) We will not consider these appended documents or any statements of fact in

respondent's brief unsupported by the record on appeal. (*Doers*, *supra*, 23 Cal.3d at p. 184, fn. 1; *Hodge*, *supra*, 130 Cal.App.4th at p. 546, fn. 1.)

II. The Judgment Must Be Affirmed

A. Orders of Reference and Standard of Review

Pursuant to sections 638 and 639, the trial court may refer a matter to a referee (special master) for findings of fact. An order of reference may be—as was the case here—based upon the stipulation of the parties' under section 638. Alternatively, where all parties do not consent, the court, either upon the written motion of a party or on its own motion, may appoint a referee under specified circumstances. (§ 639, subd. (a).) In the case of an order based upon the parties stipulation under section 638 (i.e., a voluntary reference), the order may be a general reference that the referee may "hear and determine any or all of the issues in an action . . . whether of fact or of law" (§ 638, subd. (a)), or a special reference "[t]o ascertain a fact necessary to enable the court to determine an action" (§ 638, subd. (b)).

Unless the court otherwise orders, a referee must submit a written statement of decision to the court within 20 days after the conclusion of the hearing. (§ 643, subd. (a).) In the case of a general reference pursuant to the parties' stipulation, "the decision of the referee . . . upon the whole issue must stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered" as if the matter were tried by the court. (§ 644, subd. (a).) In contrast, the referee's decision in all other cases is advisory, and the court may adopt it in whole or in part after considering any objections and responses submitted by the parties. (§ 644, subd. (b).) Thus, "[i]n a general reference, the referee prepares a statement of decision that stands as the decision of the court and is reviewable as if the court had rendered it. The primary effect of such a reference is to require trial by a referee and not by a court or jury. [Citation.]" (*Treo @ Kettner Homeowners Ass'n v. Superior Court* (2008) 166 Cal.App.4th 1055, 1061.) Moreover, because a statement of decision by a referee

appointed under a general reference is equivalent to the decision of the court, it is subject to the same procedure afforded a litigant to challenge a decision by a trial judge by a motion for new trial, and that new trial motion is properly heard by the referee. (*Clark v. Rancho Santa Fe Assn.* (1989) 216 Cal.App.3d 606, 625.)

On appeal, we review the special master's findings as if they were findings of the court, applying the same standards of review applicable to a judgment. (See *Sy First Family Ltd. Partnership v. Cheung* (1999) 70 Cal.App.4th 1334, 1341; see also *Central Valley General Hosp. v. Smith* (2008) 162 Cal.App.4th 501, 513 [in case of general reference under § 638, "referee's statement of decision is reviewed by an appellate court using the same rules that apply to a trial court's statement of decision"].) Thus, we "independently review questions of law and apply the substantial evidence standard to . . . findings of fact." (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 461, fn. omitted (*SFPP*).) " 'Where findings of fact are challenged . . . we are bound by the "elementary . . . principle of law . . . that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted," to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor.' " (*Id.* at p. 462.)

B. Appellant's Claims of Error Lack Merit

1. Claim Based Upon Waiver of Hearing

Bentley contends that her attorney below, John Hannon, waived a hearing before the special master without obtaining her express permission, "thereby denying appellant due process of law under both the federal and state constitutions." She asserts in her brief that she first learned that Hannon had waived a hearing after she received a copy of the judgment on September 14, 2013. Bentley also recites in her opening brief the substance of a conversation she had with Hannon after receiving the judgment, and she notes that

Hannon had in his possession a videotape of lot markers and changes made to them; she contends this videotape was significant evidence that should have been presented at a hearing before the special master. None of these assertions of fact by Bentley is supported by citations to the appellate record. We therefore may not consider them. "Factual matters that are not part of the appellate record will not be considered on appeal and such matters should not be referred to in the briefs." (*Lona*, *supra*, 202 Cal.App.4th at p. 102.)[10]

The only reference in the appellate record to the hearing waiver was in the statement of decision of the special master: "Although the formal site inspection held on February 15, 2013 anticipated a further hearing thereafter, all counsel ultimately submitted the matter for decision without a further hearing on or about August 1, 2013."

There is nothing in the record to support Bentley's contention that her counsel waived a hearing without her consent. Accordingly, any claim of error based upon Bentley's contention that she did not consent to her attorney's waiver of a hearing is not cognizable in this appeal.

2. Substantial Evidence Supported the Judgment

Bentley contends that the special master erred with respect to his findings concerning both the lot line and parking space disputes. With respect to the lot line issue, she argues that Judge Yonts failed to take into consideration the entire history of lot line

[10] In support of her contention that her attorney waived a hearing without her approval, Bentley cites to her declaration appended to her brief, signed nearly one year after entry of judgment. As discussed in part I.A., *ante*, this document is not part of the appellate record and may not be considered by this court. (Rule 8.204(d); see *Hodge*, *supra*, 130 Cal.App.4th at p. 546, fn. 1.) Additionally, although the existence of the videotape described by Bentley in her brief, and whether it was or should have been submitted to the special master for consideration, are issues that are not before us, we note that Hannon, in a declaration filed in this court, stated that a videotape of the subject property did not physically exist.

changes. In support of this contention, Bentley submits a detailed account of such history, which is unsupported by any citations to the appellate record. We therefore may not consider such statements of alleged facts in addressing her claim of error. (*Doers, supra,* 23 Cal.3d at p. 184, fn. 1; *Lona, supra,* 202 Cal.App.4th at p. 102.) Likewise, Bentley's contention that the special master erred in connection with his findings adverse to her with respect to her second claimed parking spot is founded upon multiple factual references that are unsupported by citations to the appellate record. We may not consider these unsupported statements of alleged facts. (*Doers,* at p. 184, fn. 1.)[11]

We perceive that Bentley's contentions are that there was no substantial evidence to support the findings of the special master and that his statement of decision included irrelevant material and omitted significant evidence. In this context, as a preamble, we must recite certain basic principles applicable to such challenges.

It is a fundamental rule of appellate practice that "[a] judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Where the challenge is one based upon a claimed lack of substantial evidence to support the trial court's findings, "we are bound by the 'elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor." (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.)

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[11] For the reasons we have discussed, Bentley's references to her attachments to her briefs in support of her recitation of alleged facts is improper because those attachments are not "materials in the appellate record" specified in rule 8.204(d). We therefore may not consider them. (See *Hodge, supra,* 130 Cal.App.4th at p. 546, fn. 1.)

A statement of decision must "explain[] the factual and legal basis for [the court's] decision as to each of the principal controverted issues at trial." (§ 632.) The statement of decision need only " 'state ultimate rather than evidentiary facts.' " (*In re Marriage of Garrity and Bishton* (1986) 181 Cal.App.3d 675, 686.) The court is not required "to make an express finding of fact on every factual matter controverted at trial, where the statement of decision sufficiently disposes of all the basic issues in the case. [Citations.]" (*Bauer v. Bauer* (1996) 46 Cal.App.4th 1106, 1118 (*Bauer*).) As noted, when issued by a referee pursuant to a general reference under § 638, the "statement of decision is reviewed by an appellate court using the same rules that apply to a trial court's statement of decision." (*Central Valley General Hosp. v. Smith*, *supra*, 162 Cal.App.4th at p. 513.)

Any challenge by Bentley to the sufficiency of the evidence supporting the judgment must fail. "[A]n attack on the evidence without a fair statement of the evidence is entitled to no consideration when it is apparent that a substantial amount of evidence was received on behalf of the respondent. [Citation.] Thus, appellants who challenge the decision of the trial court based upon the absence of substantial evidence to support it ' " are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed waived." [Citations.]' [Citation.]" (*Nwosu*, *supra*, 122 Cal.App.4th at p. 1246.) Because any claim of insufficiency of the evidence is supported by no citations to the record, and her recitation of facts fails to discuss all evidence material to her contentions, we conclude that Bentley has waived such appellate challenge. (See *id.* at pp. 1246-1247.)

Bentley contends that the special master, in his statement of decision, included irrelevant evidence (e.g., a declaration from Jack Kerin) and omitted key evidence concerning the placement and movement of lot lines. She likewise argues that Judge Yonts omitted from the statement of decision important evidence relative to the Park's prior efforts to deprive her of a second parking space. To the extent that Bentley's challenge to the statement of decision is based upon the omission of evidence that she

argues supported her position, we may not consider it, because that alleged omitted evidence (attached to Bentley's appellate briefs) is not part of the appellate record and may not be considered. (*Doers*, *supra*, 23 Cal.3d at p. 184, fn. 1; *Hodge*, *supra*, 130 Cal.App.4th at p. 546, fn. 1.)

We have reviewed the statement of decision of the special master, and find it to be a detailed and well-reasoned opinion. It appears, on its face, to "sufficiently dispose[] of all the basic issues in the case. [Citations.]" (*Bauer*, *supra*, 46 Cal.App.4th at p. 1118.) Applying the appropriate presumption that the lower court was correct, with "all intendments and presumptions . . . indulged in favor of its correctness" (*In re Marriage of Arceneaux*, *supra*, 51 Cal.3d at p. 1133), we conclude that any challenge by Bentley to the statement of decision is without merit.

DISPOSITION

The judgment is affirmed.

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WALSH, J. *

WE CONCUR:

_____
RUSHING, P.J.

_____
PREMO, J.

*Judge of the Santa Clara County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.